



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

December 23, 2015

SUITE 1100  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2128  
TELEPHONE: (651) 282-5700

Michael Gans  
United States Court of Appeals  
for the Eighth Circuit  
Thomas F. Eagleton Courthouse  
Room 24.329  
111 South 10<sup>th</sup> Street  
St. Louis, MO 63102

**Re: North Dakota, et al. v. Beverly Heydinger, et al., No. 14-2156 and 14-2251**

Dear Mr. Gans:

Pursuant to Federal Appellate Rule 28(j), Appellants advise the Court of developments related to the decision of the United States Court of Appeals for the Tenth Circuit in *Energy and Environment Legal Institute v. Epel, et al.*, 793 F.3d 1169 (10th Cir. 2015). In that case, the Tenth Circuit held that a state law could be struck down based on extraterritoriality only when it is: "(1) a price control or price affirmation regulation, (2) linking in-state prices to those charged elsewhere, with (3) the effect of raising costs for out-of-state customers or rival businesses." *Id.* at 1173. The decision provided further support that Minn. Stat. § 216H.03, subds. 3(2) and 3(3) does not violate the extraterritoriality doctrine. *See* Appellants' Br. at 43-47; Appellants' Rep. & Resp. Br. at 24-32. On December 7, 2015, the United States Supreme Court denied the Energy and Environmental Legal Institute's petition for writ of certiorari. *See Energy and Environment Legal Inst. v. Epel, et al.*, 84 USLW 3218, 2015 WL 6001179 (U.S. Dec. 7, 2015) (No. 15-471).

Sincerely,

s/ Alethea M. Huyser  
ALETHEA M. HUYSER  
Manager, Civil Litigation Division  
Assistant Solicitor General

MICHAEL EVERSON  
Assistant Attorney General

(651) 757-1243 (Voice)  
(651) 282-5832 (Fax)

## **CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2015, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Alethea M. Huyser

ALETHEA M. HUYSER

Assistant Attorney General

MICHAEL EVERSON

Assistant Attorney General

Telephone: (651) 757-1243

Fax: (651) 282-5832